

No. 95012-1

NO. 49029-3-II

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON,

Appellant,

v.

WAYLON JAMES HUBBARD,

Respondent.

BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES

- A.** Is Mr. Hubbard entitled to a Certificate and Order of Discharge effective on February 25, 2013, pursuant to RCW 9.94A.637(1)(c)?
- B.** Was the trial court's finding that Mr. Hubbard completed the conditions of his sentence on February 25, 2013, substantially supported by the evidence?

II. STATEMENT OF THE CASE

On October 29, 2004, Mr. Hubbard entered a guilty plea for possession of stolen property in the second degree. (CP 8). As part of the Judgment and Sentence (CP 8-20), Mr. Hubbard was ordered to pay legal financial obligations (LFOs) and a five-year no contact order was entered. (CP 10-12). He was sentenced to 30 days of confinement, 15 of which were converted to 120 hours of community restitution under the supervision of the Department of Corrections (DOC). (CP 13). Mr. Hubbard was ordered to comply with other conditions set forth in Appendix H (CP 14), including, in part, 12 months of community custody, no firearms, no consumption of alcohol or controlled substances, submission to urinalysis and breathalyzer, and alcohol and drug evaluation (with treatment, if recommended). (CP 18).

On December 15, 2004, the Judgment and Sentence was amended to omit Section 4.6 (12 months of community custody) and all conditions

previously set forth in Appendix H. (CP 21). As a result, on or about February 24, 2005 (filed March 9, 2005), DOC terminated its supervision of Mr. Hubbard. (CP 3-5). As of that date, DOC confirmed Mr. Hubbard had completed 55 of the 120 community restitution hours. *Id.*

Mr. Hubbard completed his 120 community restitution hours at a non-profit organization, Pacific Aging Council Endeavor (PACE) Senior Center, located in Raymond, Washington. (CP 6-7). Shelley Steveson, Site Manager at PACE, coordinated and supervised the community restitution hours performed by PACE volunteers as part of her regular duties. *Id.* Ms. Steveson worked at PACE until May 2011. *Id.* PACE closed in August 2011. *Id.* Because PACE has been closed since 2011, Ms. Steveson attested under penalty of perjury that “[w]hile there are no [PACE] records, I distinctly remember Mr. Hubbard, because he was good at showing up and doing the work as expected. I am confident of my recollection that he completed his 120 hours as was required.” (CP 7:5-7).

In his Petition, Mr. Hubbard attests under penalty of perjury that on February 25, 2013, he completed all requirements of his Judgment and Sentence, including the payment of all LFOs; the final requirement of his Judgment and Sentence. (CP 1:19-2:6). *See also* Appendix, Exhibit A, Declaration, Virginia Leach, Pacific County Clerk (October 6, 2016).

On April 6, 2016, Mr. Hubbard filed a Petition for Certificate and Order of Discharge & Request Retroactively Dated to February 25, 2013. (CP 1-2). At a hearing on the merits on April 29, 2016, the Honorable Michael J. Sullivan granted the discharge and took the petition under advisement to reread cases cited regarding the issue of the effective date. *See* Appendix, Exhibit B, Clerk’s Note (April 29, 2016).

On May 4, 2016, Judge Sullivan signed the Certificate and Order of Discharge, dated effective February 25, 2013. (CP 26-27). On July 13, 2016, Judge Sullivan signed the Findings of Fact and Conclusions of Law of Defendant’s Petition for Certificate and Order of Discharge entered on May 4, 2016. (CP 29-32).

The State appealed. (CP 28).

III. ARGUMENT

A. Mr. Hubbard satisfied the conditions of his sentence on February 25, 2013, and is entitled to a Certificate and Order of Discharge as of that date

1. Standard of review

The issue in this case is the effective date of the Certificate and Order of Discharge, which involves the analysis of the statutory construction, interpretation and application of RCW 9.94A.637. This is a question of law; therefore, the standard of review is *de novo*. *Stuckey v. Dep’t of Labor & Indus.*, 129 Wn.2d 289, 295, 916 P.2d 399 (1996);

Clausen v. Dep't of Labor & Indus., 130 Wn.2d 580, 583, 925 P.2d 624 (1996).

2. Mr. Hubbard's Certificate and Order of Discharge dated February 25, 2013 is not a *nunc pro tunc* order

The State incorrectly contends the effective date of February 25, 2013 on Mr. Hubbard's Certificate and Order of Discharge is a *nunc pro tunc* order and the standard of review is abuse of discretion. Because the Order is not a *nunc pro tunc* order, and because the trial court correctly applied the statute, the State's contention and analysis are without merit.

At no time did Mr. Hubbard request a *nunc pro tunc* order, nor was it characterized as such in his petition. To the contrary, pursuant to RCW 9.94A.637(1)(c), February 25, 2013, the date on which Mr. Hubbard completed the terms and conditions of his Judgment and Sentence, is the proper *effective* date of the Certificate and Order of Discharge granted by the trial court.

A *nunc pro tunc* order is properly issued to correct a ministerial or clerical error (not judicial errors), i.e., to record some judicial act performed at an earlier time, but not made part of the record. *See generally*, *State v. Mehlhorn*, 195 Wash. 690, 82 P.2d 158 (1938); *citing State v. Ryan*, 146 Wash. 114, 261 P. 775 (1927); *State v. Smissaert*, 103 Wn.2d 636, 694 P.2d

654 (1985); *State v. Luvene*, 127 Wn.2d 690, 903 P.2d 960 (1995); *State v. Hendrickson*, 165 Wn.2d 274, 198 P.3d 1029 (2009).

Mr. Hubbard's Certificate and Order of Discharge was not issued to correct a ministerial or clerical error; nor was it issued to create a record of a judicial act previously taken but not made part of the record. Pursuant to RCW 9.94A.637(1)(c), the Certificate and Order of Discharge properly reflects that *effective* on February 25, 2013, Mr. Hubbard completed the terms and conditions of his Judgment and Sentence.

3. The trial court properly interpreted RCW 9.94A.637(1)(c) as permitting February 25, 2013, to be the effective date of Mr. Hubbard's Certificate and Order of Discharge

The proper effective date of Mr. Hubbard's Certificate and Order of Discharge is at the time of his completion of the terms of his Judgment and Sentence, not at the time Mr. Hubbard filed his petition.

a. *State v. Johnson* was incorrectly decided and (or in the alternative) is distinguishable from the case *sub judice*

In interpreting RCW 9.94A.637(1)(a), the *Johnson* court held "[t]he effective date of the certificate of discharge must be the date the court received notice that the terms of the sentence were satisfied." 148 Wn. App. 33, 39, 197 P.3d 1221 (2008), *rev. denied*, 166 Wn.2d 1017 (2009). When reading RCW 9.94A.637 in its entirety, as applied to differently situated ex-offenders requesting certificates and orders of discharge; respectfully, the

Johnson analysis and conclusion is incompatible with other provisions therein.

In July 2000, Johnson entered a guilty plea to one count of manufacturing marijuana. *Id.* at 35. Among other conditions, Johnson was ordered to pay LFOs, was sentenced to 30 days in county jail (converted to 240 hours of community service) and was ordered to serve 12 months of community supervision. *Id.* at 35-6.

In November 2001, DOC recommended termination of supervision, stating Johnson had completed most of the court ordered requirements, *except he had “failed to pay his DOC supervision fees.”* *Id.* at 36 (emphasis added). No action was taken and in May 2002, DOC issued another report recommending discharge. *Id.* The court terminated supervision on May 29, 2002 (filed in June 2002). *Id.* However, the court did not issue a certificate of discharge, rationalizing in its order that the defendant “*has not complied with the conditions and requirements of the sentence imposed[,]*”, but the cost of continuing supervision was not justified. *Id.* at 36-7 (emphasis added).

On November 17, 2007, Johnson filed a Petition for a Certificate and Order of Discharge and requested it be backdated to May 29, 2002, claiming the court erred in only terminating supervision and not issuing the certificate of discharge at that time. *Id.* at 37. The parties agreed a

certificate of discharge should be issued, but disagreed as to the effective date. *Id.* The State argued, and the trial court and appellate court upheld, that the effective date was November 17, 2007, the date Johnson's petition was filed.

If extended to the facts in Mr. Hubbard's case, it becomes apparent the *Johnson* interpretation was incorrectly decided. Additionally, or in the alternative, the facts in *Johnson* are distinguishable in two simple yet significant ways from Mr. Hubbard's case.

The first distinction is Johnson failed to comply with the conditions and requirements of his sentence imposed as of May 29, 2002 (the effective date Johnson requested for his certificate of discharge). In contrast, Mr. Hubbard satisfied *all* requirements of his Judgment and Sentence on February 25, 2013.

The second distinction is RCW 9.94A.637(1)(a) was applied because Johnson was under DOC supervision. In contrast, Mr. Hubbard's case falls under RCW 9.94A.637(1)(c), because his supervision was terminated by the amended December 15, 2004, Judgment and Sentence.

Furthermore, *Johnson* is incorrectly decided because the court did not consider the effect of its ruling if reading the statute in its entirety; notably, subsections (1)(a) and (1)(c). "If a statute is unambiguous [] it is not subject to judicial construction and its meaning is to be derived from the

language of the statute alone.” *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997). “As a rule of statutory interpretation, courts construe statutes to avoid ‘absurd or strained consequences’.[sic] Moreover, courts should read the statute as a whole, considering all provisions in relation to each other and giving effect to each provision.” *Wright v. Engum*, 124 Wn.2d 343, 351, 878 P.2d 1198 (1994), citing *In re Eaton*, 110 Wn.2d 892, 901, 757 P.2d 961 (1988) and *Nisqually Delta Ass’n v. DuPont*, 103 Wn.2d 720, 730, 696 P.2d 1222 (1985), respectively.

In its interpretation of RCW 9.94A.637(1)(a), the *Johnson* court failed to consider all the provisions in relation to each other, and giving consistent effect to the provisions. The *Johnson* court analysis determined the plain language of the statute on its face is unambiguous. *Id.* at 38. However, its restatement of the statute in its ruling that “[t]he effective date of the certificate of discharge must be the date the court received notice that the terms of the sentence were satisfied[,]” is its *interpretation* and *judicial construction* of the statute—it is *not* the plain language of the statute. *Id.* at 39. And, although it concluded the statute was unambiguous in arriving at its ruling, the *Johnson* court incongruously acknowledged, “[t]he statute does not state the date on which the certificate is to be effective.” *Id.*

Thus, contrary to the holding in *Johnson*, the plain language of RCW 9.94A.637 is ambiguous. In failing to read the statute in its entirety,

in particular the (1)(a) and (1)(c) provisions, as cautioned in *Wright*, the interpretation in *Johnson* results in an absurd or strained consequence if extended to Mr. Hubbard's case under (1)(c).

Specifically, an offender ordered to remain under DOC supervision pursuant to RCW 9.94A.637(1)(a) is typically convicted of more serious crimes. This (1)(a) offender receives his or her certificate of discharge *automatically* through the statutory process mandating DOC to notify the court on the offender's behalf "[w]hen an offender has completed all requirements of the sentence, including any and all legal financial obligations." RCW 9.94A.637(1)(a) (emphasis added).

In contrast, pursuant RCW 9.94A.637(1)(c), a (1)(c) offender, like Mr. Hubbard, who is not under DOC supervision (and typically offenders convicted of less serious crimes), is required to navigate the issuance of the certificate of discharge on his or her own. As here, it was not until 2015 Mr. Hubbard became aware that this legal process to assist in cleaning up his conviction history to improve his employability options.

Mr. Hubbard should not be penalized under the *Johnson* interpretation that the effective date be in 2016 just because the DOC was not monitoring him. "The interpretation that is adopted should be the one that best advances the legislative purpose." *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 E2d 24 (1991). It seems unlikely the Washington

Legislature intended the statute to make it easier for an offender with a more serious conviction record to benefit from these provisions; while, in contrast, an offender with a less serious conviction record is penalized for not having the benefit of the automated process completed on his or her behalf by DOC.

Since the *Johnson* statutory construction and interpretation of RCW 9.94A.637(1)(a) results in an absurd or strained consequence if extended to Mr. Hubbard's situation under RCW 9.94A.637(1)(c), provisions (1)(a) and (1)(c) must be read together to arrive at the same and equitable result for differently situated ex-offenders requesting certificates and orders of discharge. To avoid the absurd or strained consequence of extending *Johnson*, the effective date must be the date when the offender completed his or her sentence requirements.

Additionally, aside from *Johnson*, which is distinguishable on the facts, and arguably incorrectly decided by not looking at the statute in its entirety, there are several other cases that are consistent with the legal interpretation advocated by Mr. Hubbard.

b. Analogous case law is instructive on this issue *sub judice*

There are various cases more instructive on this issue than *Johnson*. For example, in *State v. Swanson*, this Court reversed the trial court's denial of Swanson's petition to restore his firearm rights once he met the

requirements enumerated in RCW 9.41.040(4). 116 Wn. App. 67, 78, 65 P.3d 343 (2003), *rev. denied*, 150 Wn.2d 1006 (2003). As part of the analysis as to whether or not a court has discretion or not to restore Swanson's firearm rights, RCW 9.94A.637 was compared to RCW 9.41.040(4) for guidance. *Id.* at 72-5. In reviewing RCW 9.94A.637, this Court found it the most similar, of the statutes it compared, to RCW 9.41.040(4). *Id.* And, there is no discretion in either statute once an offender meets the statutory requirements. *Id.* Discussing RCW 9.94A.637, this Court stated, "restoration is automatic *once* the offender completes his sentence requirements." *Id.* at 74 (emphasis added).

Another strong analogous example on point is *State v. T.K.*, in which three cases were heard on appeal regarding vacating and sealing juvenile criminal records. 139 Wn.2d 320, 323, 987 P.2d 63 (1999). In these cases, the issue was whether subsequent amendments relating to vacating and sealing juvenile records applied to defendants who became eligible *prior* to the amendments, but who filed petitions to seal and vacate *after* the amendments went into effect. *Id.*

"Once the conditions of the statute are met, the defendant has a right to relief and a court has the nondiscretionary obligation to seal *regardless of when the motion is made.*" *Id.* at 331 (emphasis added) (*citing State v. Webster*, 69 Wn. App. 376, 378-9, 848 P.2d 1300 (1993) ("There being no

contrary interpretation apparent from the plain reading of the statute, the superior court was obliged to seal the records *once the requirements of RCW 13.50.050(11) were met.*” (emphasis added)). The court in *T.K.* ruled in favor of all three defendants, holding, “we conclude that completion of the statutory conditions, *not the filing of a motion to seal*, is the event that triggers application of the statute.” *Id.* at 332 (emphasis added).

Another example is *State v. Donaghe*. In May 1995, when Donaghe’s incarceration arising from an Alford plea on second and third degree rape was scheduled to end, he was transferred pending civil involuntary commitment proceedings as a sexually violent predator. 172 Wn.2d 253, 258, 256 P.3d 1171 (2011). While awaiting these proceedings, in 2000, Donaghe filed for a certificate of discharge claiming his criminal confinement ended in 1995. *Id.* At various trial and appellate levels, the courts properly upheld the denial of his request for a certificate of discharge. *Id.* However, in the court’s discussion regarding disenfranchisement and restoration of rights, similar to the cases cited *supra*, the court states, “[c]onvicted felons remain without their civil rights . . . until issued a certificate of discharge *upon completion of the requirements of their sentence.*” *Id.* at 269 (emphasis added).

By persuasive analogy, each of these cases are consistent with Mr. Hubbard’s analysis of this issue. To adopt the *Johnson* analysis, an outlier

by its analysis, frustrates the purpose of RCW 9.94A.637, when read and applied in its entirety.

c. *State v. Porter* is not dispositive

The other case cited by the State, *State v. Porter*, cursorily adopted the holding in *Johnson*, without substantive analysis of the specific issue presently before this Court. 188 Wn. App 735, 738, 356 P.3d 207 (2015), *citing Johnson*, 148 Wn. App. at 39 (“The effective date of discharge is the date the trial court receives notice that all sentence requirements have been satisfied.”). This case is distinguishable and not dispositive. The *Porter* court was analyzing a separate issue as to what effect Porter’s no contact order, which expired January 2012, should have on the effective date for Porter’s certificate of discharge. *Id.*

In December 2006, Porter was sentenced to a six-month confinement, 12-month community custody, ordered to pay LFOs, and a five-year no contact order was entered. *Id.* at 737. In July 2007, Snohomish County Corrections notified the trial court that Porter had completed his confinement. *Id.* In March 2008, DOC notified the trial court Porter had completed community custody. *Id.* On December 18, 2008, the county clerk notified the trial court that Porter had paid his LFOs. *Id.*

When Porter petitioned for a certificate of discharge in 2014, the parties agreed the discharge was proper, but the State argued, and the trial

court agreed, the effective date should be when the no contact order expired, i.e., January 2012. *Id.*

Porter asserted the effective date should be December 18, 2008. *Id.*

State v. Miniken, 100 Wn. App. 925, 999 P.2d 1289 (2000) was superseded by statute when RCW 9.94A.637(2)(a) was amended in 2009 making no contact orders not a requirement of an offender's sentence (but remain in place separately for the safety of the victim). *Id.* at 738.

As a result, the appellate court in *Porter* reversed the lower court's ruling in favor of Porter and held that the effective date was December 18, 2008. *Id.* at 743. The case was remanded to the trial court to backdate Porter's certificate and order of discharge effective on that date. *Id.*

As such, *Porter* is not dispositive in the analysis of the case *sub judice*, because December 18, 2008, in *Porter*, is the *same* date that Porter completed his judgment and sentence requirements *and* when the court received notice from the county clerk that Porter had met those requirements. In Mr. Hubbard's case, the issue before this Court is these two triggers occurred on *different* dates, i.e., Mr. Hubbard completed his Judgment and Sentence requirements on February 25, 2013 and filed his Petition on April 6, 2016.

Notably, *Porter* is instructive on the *nunc pro tunc* issue raised by the State. On remand ordering the trial court to issue the certificate and

order of discharge *backdated* to an *effective* date of December 12, 2008, the *Porter* analysis is correctly absent any mention that the backdated certificate and order of discharge is a *nunc pro tunc* order. That order was not correcting a ministerial or clerical error; nor was it creating a record of a judicial act previously taken but not made part of the record. The remand instruction is consistent with what Mr. Hubbard requested and received at trial.¹

B. The State is barred from challenging the trial court’s factual findings

1. The State’s challenges to the trial court’s factual findings are not properly before this Court because the State declined to produce a verbatim report

The State’s challenges to the trial court’s factual findings that Mr. Hubbard completed the required community restitution hours and paid his LFOs by February 25, 2013 are not properly before this Court. The State declined to request the verbatim report as “unnecessary in this matter as the question is resolved as a matter of law.” *See State’s Designation of Clerk’s Papers*, page 2 (June 20, 2016). As such, the State is now barred from

¹ Similarly, the *Johnson* court does not discuss the order at issue in that case in the context of a *nunc pro tunc* order. In its Footnote 1, the court notes the issue of *nunc pro tunc* was specifically abandoned by Johnson, and thus not addressed by the court. *State v Johnson*, 148 Wn. App. 33, 37, 197 P.3d 1221 (2008), *rev. denied*, 166 Wn.2d 1017 (2009). It seems a fair assumption that if the *Johnson* court determined the case analysis hinged on Johnson’s request to backdate being an improper *nunc pro tunc* order, it could have (and likely would have) raised this *sua sponte*.

raising any challenge as to the trial court's factual findings. RAP 9.2(b); *see generally*, *Noble v. Ogborn*, 43 Wn. App. 387, 717 P.2d 285, *rev. denied*, 106 Wn.2d 1004 (1986); *Barrie v. Kitsap County*, 84 Wn.2d 579, 527 P.2d 1377 (1974); *Tunget v. State Employment Sec. Dep't.*, 78 Wn.2d 954, 481 P.2d 436 (1971).

2. Even if the State is permitted to challenge these findings, substantial evidence supports the trial court's factual findings

While framed as challenging the trial court's conclusions of law, the State is challenging the sufficiency of the evidence of the trial court's factual findings. As such, the standard of review is the "substantial evidence" test, not *de novo* as argued by the State. "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *Bering v. Share*, 106 Wn.2d 212, 220, *cert. dismissed*, 479 U.S. 1050 (1987). A judge abuses discretion by making findings that are wholly unsupported by the record.

a. The finding that Mr. Hubbard completed community restitution is supported by substantial evidence

At the time DOC terminated Mr. Hubbard's supervision, DOC confirmed Mr. Hubbard had completed 55 of the 120 community restitution hours. (CP 3-5). Mr. Hubbard attests under penalty of perjury he completed all requirements imposed by the trial court in the Judgment and Sentence on

February 25, 2013. (CP 1:19-2:6). Mr. Hubbard's completion of the 120 hours, including the remaining 65 community restitution hours challenged by the State, is similarly attested to under penalty of perjury by Shelley Steveson, the PACE Site Manager. (CP 6-7). Ms. Steveson coordinated the community restitution performed by PACE volunteers as part of her regular duties, and supervised Mr. Hubbard when he completed his hours. *Id.*

Because PACE closed in August 2011, Ms. Steveson's declaration was necessary as there were no PACE records of Mr. Hubbard's completed community restitution hours after DOC ceased its supervision. Ms. Steveson states that "[w]hile there are no [PACE] records, I distinctly remember Mr. Hubbard, because he was good at showing up and doing the work as expected. I am confident of my recollection that he completed his 120 hours as was required." (CP 7:5-7).

The State, citing *West Coast, Inc. v. Snohomish County*, states the trial court's findings of fact are reviewed to determine if substantial evidence in the record supports the trial court's findings of fact; and then, reviewing *de novo*, the court determines if those findings of fact support the trial court's conclusion of law. 112 Wn. App. 200, 48 P.3d 997 (2002).

The court in *West Coast* actually stated:

We review the trial court's findings of fact to determine whether they are supported by substantial evidence in the record. We then determine whether those findings of fact support the trial court's conclusions of law. *Unchallenged findings are verities for purposes of appeal.* We review conclusions of law de novo.

Id. at 206 (emphasis added).

The State fails to provide any basis for its argument that the trial court's factual findings are not supported by substantial evidence—or for that matter, that the legal conclusions are unsupported by those factual findings. The State merely claims, with no basis, the factual findings (and legal conclusions) are insufficient.

To the contrary:

The trial court's Finding of Fact Number 10 finds Ms. Steveson supervised Mr. Hubbard while he performed and completed his 120 hours of community restitution on or before August 2011, when PACE closed. (CP 30:16-21). The State did not assign error to this factual finding—it is thus a verity for purposes of appeal.

The trial court's Finding of Fact Number 11 finds, “the statements made by Ms. Steveson to be credible.” (CP 30:22). The State did not assign error to this factual finding—it is thus a verity for purposes of appeal.

The trial court's Conclusion of Law Number 16 states, "Ms. Steveson's Declaration is admissible and credible evidence." (CP 31:16). The State did not assign error to this legal conclusion.

The State contends in its brief that the evidence submitted by Mr. Hubbard is insufficient to establish Mr. Hubbard completed the remaining 65 community restitution hours. As set forth *supra*, however, the unchallenged factual findings are verities for purposes of appeal. Similarly, in its written objection at trial, the State stated, Ms. Steveson's Declaration "would be insufficient under any other circumstances and should, therefore, be insufficient here." (CP 24:13-15).

Notwithstanding this contention, at no time in the State's initial objection or its appellate brief does it cite any contrary evidence in the record (or law or precedent) supporting its position on this issue. Further, the State fails to frame for this Court as to how or why the trial court's factual findings or legal conclusions are incorrect.

The unchallenged record is clear. Mr. Hubbard completed the 120 community restitution hours.

b. The finding that Mr. Hubbard completed the requirements of his Judgment and Sentence when he paid his LFOs on February 25, 2013 is supported by substantial evidence

The State argues, with no basis, there is a lack of substantial evidence supporting the trial court's finding that Mr. Hubbard paid the LFOs by this date. Although the State initially framed the factual findings issue in the context of challenging the 65 community restitution hours, in the last paragraph, page 7, of the State's Brief challenging factual findings, the State raises a separate challenge as to whether Mr. Hubbard established February 25, 2013, as the correct date that he completed the requirements of his Judgment and Sentence when he paid his LFOs on February 25, 2013.

Respectfully, this argument is a red herring.

Presumably, the State (and the trial court) can independently verify this information in the data systems to which it has access and could have readily raised and documented this date was incorrect at the April 29, 2016 hearing—it did not. The State similarly could have documented this in its appellate brief—it did not.

Mr. Hubbard attested to this date, February 25, 2013, in his petition. (CP 1:19-2:6). As set forth in Appendix, Exhibit A, for clarification, Virginia Leach, the Pacific County Clerk, confirms Mr. Hubbard completed his payment of LFOs on February 25, 2013. *See Appendix, Exhibit A, Declaration, Pacific County Clerk, Virginia Leach (October 6, 2016)*. The trial court entered Findings of Fact and Conclusions of Law confirming this date. (CP 30:10, 30:23, 31:8, 31:10-11, 32:1-4). The State's challenge as

to the date of Mr. Hubbard's completion of the requirements of the Judgment and Sentence on February 25, 2013, is without merit.

IV. CONCLUSION

The State's conclusion that "[t]here is no evidence when Hubbard completed his community service, nor is there a date proven to establish when Hubbard completed the payment of his legal financial obligations[]" is irreconcilable with the record before this Court. State's Brief, at 7.

The trial court's Findings of Facts are supported by substantial evidence. The record is clear. Mr. Hubbard completed his 120 community restitution hours, no later than August 2011 when PACE closed. (CP 1-2; CP 6-7). Mr. Hubbard paid his LFOs on February 25, 2013. (CP 1-2; *see also* Appendix, Exhibit A). These facts are verities for purposes of appeal. *West Coast, Inc.*, 112 Wn. App. at 206.

For the reasons discussed herein, pursuant to RCW 9.94A.637(1)(c), Mr. Hubbard completed the requirements of his Judgment and Sentence, including the challenged 65 community restitution hours, on February 25, 2013. The trial court was correct in its Findings of Fact and Conclusions of Law in issuing the Certificate and Order of Discharge effective on that date. Mr. Hubbard respectfully requests this Court affirm the lower court's ruling.

V. APPENDIX

Pursuant to RAP 10.4(c), Mr. Hubbard requests this Court take judicial notice of a declaration signed by Virginia Leach, the Pacific County Clerk, confirming Mr. Hubbard paid his LFOs on February 25, 2013—the final requirement of his Judgment and Sentence. *Attached hereto and incorporated herein by reference*, Exhibit A, Declaration, Virginia Leach, Pacific County Clerk (October 6, 2016).

Mr. Hubbard requests this Court take judicial notice of the Clerk's Note (34), previously submitted to this court by the State on July 6, 2016 as a supplemental exhibit in support of its Motion to Permit Late Appeal. *Attached hereto and incorporated herein by reference*, Exhibit B, Clerk's Note (April 29, 2016).

RESPECTFULLY SUBMITTED this 8th day of December 2016.

NORTHWEST JUSTICE PROJECT
Attorney for Respondent Waylon James Hubbard

By  _____
Sarah Glorian, WSBA #39914

APPENDIX
EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

STATE of WASHINGTON,

Plaintiff,

Case No.: 04-1-00153-4
Appellate Case No. 49029-3-II

vs.

WAYLON JAMES HUBBARD,

Defendant.

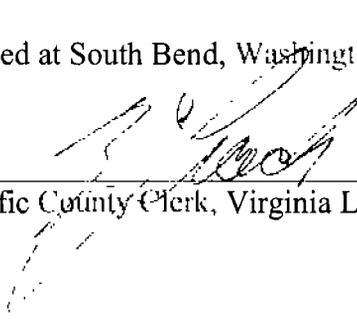
DECLARATION
CLERK OF THE COURT
PACIFIC COUNTY SUPERIOR COURT

Confirmation of Legal Financial Obligations:

I have checked the Clerk's financial records and the records show that the defendant completed the payment of all legal financial obligations (including principal and interest) and all applicable collection costs on February 25, 2013.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at South Bend, Washington on 6TH day of October 2016.



Pacific County Clerk, Virginia Leach

APPENDIX
EXHIBIT B

NORTHWEST JUSTICE PROJECT

December 08, 2016 - 12:27 PM

Transmittal Letter

Document Uploaded: 5-490293-Respondent's Brief.pdf

Case Name: State of Washington v. Waylon James Hubbard

Court of Appeals Case Number: 49029-3

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE of WASHINGTON)	
Appellant,)	Trial Court Case No. 04-1-00153-4
)	Court of Appeals Case No. 49029-3-II
v.)	
)	Certificate of Service
WAYLON JAMES HUBBARD)	
Respondent.)	

On December 8, 2016, I sent by electronic mail a copy of Respondent's Brief and Proof of Service to:

Mark D. McClain / Donald J. Richter
Pacific County Prosecutor's Office
PO Box 45
South Bend, WA 98586
mmclain@co.pacific.wa.us
drichter@co.pacific.wa.us

David C. Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

I, Sarah Glorian, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 8th day of December 2016.



Sarah Glorian

NORTHWEST JUSTICE PROJECT

December 08, 2016 - 12:29 PM

Transmittal Letter

Document Uploaded: 5-490293-Certificate of Service_Respondent's Brief_State v. Hubbard_49029-3-II.pdf

Case Name: State of Washington v. Waylon James Hubbard

Court of Appeals Case Number: 49029-3

Is this a Personal Restraint Petition? Yes No

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Statement of Arrangements

Motion: ____

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Statement of Additional Authorities

Cost Bill

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Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: Certificate of Service - Respondent's Brief

Comments:

No Comments were entered.

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mmcclain@co.pacific.wa.us

drichter@co.pacific.wa.us